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ARTICLES

The Ideological Foundations of 'Globalisation' and 'Human Rights': Imperatives for Third World Activism by S. N. Okogbule..... 1 - 30

The Administration of Criminal Justice Bill vis-a-vis The Criminal Justice (Mandatory Procedure Bill and The Need for the Enactment of both) by Mohammed Enesi Etudaiye..... 31 - 59

OPEC and the Politics of Global Oil Supply: Factors Affecting Realisation of the Objectives under Article 2 of OPEC Statute by Hadiza Hamma..... 60 - 64

A Critique of the Nigerian Legal Framework for the Protection of Cultural Goods from Exportation Abuse by Adewumi A.A. ..... 65 -101

Domicile and the Determination of Personal Law: A Critique by Ayinla L.A., Ahmad B.A., &Olusola G.H..... 102 - 124

Convention on Biological Diversity: Obligations Imposed on Coastal States to Prevent the Introduction of Alien Marine Species by Bose Lawal..... 125 - 140

The Role of the Judiciary in National Development by Maiyaki T.B. 141 - 159

Harmonisation of Laws through the Interaction of Inter-governmental and Non-governmental Actors in a Globalised World: A Welcome Development for International Commercial Arbitration by Etejere E..... 160 - 176

Law and Religion in the 21st Century Nigerian Society: An Interdisciplinary Approach by Nwosu P.U..... 177 - 195

Untying the Predictive Factors of Juvenile Delinquency: A Global Analysis by Abdulraheem-Mustapha M.A.....
196 - 222

The International Covenant and The Committee on Economic, Social and Cultural Rights: A Marriage of Convenience? by Amoloye-Adebayo Azizat Omotoyosi. 223 - 238

Religion and the Rule of Law in Nigeria by Alamu A.G.....
239 - 261

Death Penalty: A Violation of the Fundamental Right to Life in Nigeria? byOnuora-Oguno A &Ushie N..... 262 - 278

Speedy Determination of Election Proceedings in Nigeria and the Imperatives of Substantial Justice by Unachukwu S.C..... 279 - 340

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THE INTERNATIONAL COVENANT AND THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A MARRIAGE OF CONVENIENCE?

AMOLOYE-ADEBAYO Azizat Omotoyosi, PhD.*

ABSTRACT.

This article argues that, until recently, the international regime for the protection of economic, social and cultural rights under the auspices of the United Nationshas received less attention relative to similar efforts for the protection of civil and political rights. The International Covenant on economic, social and cultural rights came into being in 1966 just as the international covenant on civil and political rights. Quite unlike the case with the later covenant, however, no treaty body was specifically established to monitor State Parties' compliance with the provisions of the former covenant until 1985. The article analyses the efforts of this treaty body and how it has given and continues to give so much impetus to the international regime for the protection of economic, social and cultural rights. It concludes by examining generally some other growing intellectual discourse regarding protection of economic, social and cultural rights as well as offering some suggestions for further development of the discourse.

I. Introduction

Arguably, the international system for the guarantee and protection of economic, social, and cultural (ESC) rights has its anchor in the Universal Declaration of Human Rights, 1948 (UDHR), particularly Articles 22-28. The standards contained in

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these provisions are, *inter alia*, the right to adequate standard of living incorporating such rights as to health, food, housing and general well-being; right to social security; right to work; right to education; and right to participation in cultural life. These standards appear later expanded, further defined and expressed in terms of legal obligations in the International Covenant on Economic Social, and Cultural Rights, 1966[1] (ICESCR). Although, the ICESCR arguably constitutes the main international text on the subject of ESC rights, relevant provisions are also contained in other international treaties such as the International Labour Organization (ILO) Conventions and the international human rights conventions on racial discrimination, women, children, migrant workers and persons with disabilities.[2]

Similar provisions are also contained in regional treaties such as the European Social Charter,[3] the African Charter on Human and Peoples' Rights and the 'Protocol of San Salvador'.[4] However, it may be argued that the uniqueness of ICESCR as an international instrument dedicated exclusively to the protection of ESC rights is partly because it aspires to have universal application.[5] A more fundamental reason is that, as variously

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1 This treaty entered into force on 3 January 1976, GA Res. A/RES/2200A (XXI), 993 UNTS 3.

2 For a list of some of these international human rights treaties, see For list of these Declarations, see http://www2.ohchr.org/english/law/; Brownlie, I and Goodwin-Gill, G.S., 2006. Basic Documents on Human Rights. Fifth edition. Oxford: University Press. P.1.

3 Adopted in 1961 and later revised in 1996; Council of Europe Treaty Series, No. 035.

4 Adopted in 1981, OAU doc. CAB/LEG/67/3 rev. 5.

5 This is the Additional Protocol to the American Convention on Human Rights in the Area of ESC Rights adopted in 1988. See Basic Documents Pertaining to Human Rights in the Inter-American System OEA/Ser.L/V/I.4 rev 10 (2004). P.85.

claimed in a number of General Comments[6] by the Committee on ESC Rights (CESCR), the normative content of the ICESCR on a typical right of this category may be regarded as the most important, wide-ranging and comprehensive provisions of all international instruments on the same subject. Illustrative examples are the provisions of the ICESCR on the right to education (expressed in its Articles 13 and 14) and rights to food and housing (both covered by the provisions of its Article 11).For these reasons, an analysis of the legal regime for the protection of ESC rights in this article primarily draws upon provisions of the ICESCR.

Ii. The ICESCR and The Protection Of Economic, Social And Cultural Rights

Despite the constancy and consistency of the assertion that all human rights are universal, interdependent and indivisible[7], it may be argued that the international protection of ESC rights has been, and continues to be, less successful *vis-à-vis* the enforcement of their Civil and Political rights (CP) counterparts. A long time ago, it was observed that-

> [T]he international community as a whole continue[s] to tolerate all too often breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage

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6 See paragraph 4 of the preambular provisions of the ICESCR, 1966, which provides – 'Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights ...'

7 See General Comments 4 (1991), 12 (1999) and 13 (1999) of the Committee on ESC Rights (CESCR). For example, the CESCR has stated in categorical terms in para. 2 of General Comment 13 that: 'The International Covenant on Economic, Social and Cultural Rights (ICESCR) devotes two articles to the right to education, articles 13 and 14. Article 13, the longest provision in the Covenant, is the most wide-ranging and comprehensive article on the right to education in international human rights law.'

and would lead to concerted calls for immediate remedial action."

A number of points that appear to support this contention have been recorded regarding the international protection of ESC rights. In the first place, the drafting of the ICESCR was a 'contentious, difficult and challenging matter'.[9] The initial efforts to incorporate ESC rights standards in a single treaty alongside those for CP rights had proved abortive resulting in the decision to adopt two separate Covenants in 1966.[10] Furthermore, it is usual for a core human rights treaty[11] such as the ICESCR to contain provisions for the establishment of an 'international supervisory'[12] body called a 'Committee' to monitor compliance with its standards. However, the ICESCR contains no such provision and instead places the responsibility for the implementation of its provisions on an organ of the UN, the Economic and Social Council (ECOSOC).[13]

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8 See for instance the statement at the World Conference on Human Rights: Vienna Declaration and Programme of Action, 1993. UN Document A/CONF.157/23. A more recent affirmation is paras.4 and 13 of the UN General Assembly 2005 World Summit Outcome, GA Res.A/RES/60/1 that: '4. We affirm that our common fundamental values, including freedom, equality, solidarity, tolerance, respect for human rights, respect for nature and shared responsibility, are essential to international relations. 13. We affirm the universality, indivisibility, interdependence and interrelatedness of all human rights.'

9 Statement of the Committee on Economic, Social, and Cultural Rights to the World Conference. UN Doc E/1993/22/. P.83, para. 5.

10 Baderin, M. A., and McCorquodale, R., 2007. 'The International Covenant on Economic, Social and Cultural Rights: Forty Years of Development' in Baderin, M. A., and McCorquodale, R. (eds.) Economic Social and Cultural Rights in Action. Oxford: University Press. P.23.

11 Ibid. Pp.4-7.

12 There are in existence nine core international instruments on human rights. These are the two International Covenants of 1966 and the conventions on women, children; migrant workers and their families; persons with disabilities; elimination of racial discrimination; against torture; and on protection from enforced disappearance. See http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en. Last accessed 18 November 2009.

13 O'Flaherty, M., 2002. Human Rights and the UN: Practice Before the Treaty Bodies, 2nd Edition. The Hague, etc: Martinus Nijhoff Publishers. P.1.

14 See Articles 16-22 of the ICESCR, 1966.

It is axiomatic that such an established committee plays a crucial role in ensuring that the accentuation of the network of standards and the scope of obligation of State Parties in a human rights treaty is a continuum. Unfortunately, the initial implementation of the ICESCR had little of this service. In the stead of a committee, ECOSOC established 'Working Groups' that were generally perceived as less than satisfactory methods of supervision of State Parties' treaty obligations.[14] It has in fact been argued that this initial state of affairs resulted in the ICESCR existing 'only as a textual reference point subject to the speculative claims of both its proponents and detractors.'[15] In 1985, ECOSOC[16] finally established an ICESCR Committee (CESCR or the Committee). This set in motion a process that has aided a deeper reflection and better appreciation of the standards envisaged and expressed in the ICESCR through General Comments periodically issued by CESCR.[17] In spite of this development, some analysts have been constrained by the stark reality of the enormity of economic and social deprivations facing a large number of people in the world[18] to conclude that: no other treaty is 'more frequently misinterpreted, downplayed or intentionally abused' than the ICESCR.[19]

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14 Craven, M., 1995. The International Covenant on Economic, Social, and Cultural Rights: A Perspective on its Development. Oxford: Clarendon Press. Pp. 40-42. Pp. 40-42.

15 Ibid, P.1.

16 By its resolution 1985/17.

17 The CESCR has till date issued 21 of such general comments directed towards a more effective implementation of the covenant ranging from guidelines for State-Parties in fulfilling their treaty obligations to clarification of objective standards in respect of the rights guaranteed by the covenant. For instance, the first general comment issued in 1989 was on State reporting while the latest published in 2009 concerned the 'right of everyone to take part in cultural life.' See http://www2.ohchr.org/english/bodies/cescr/comments.htm. Last accessed 20 February 2010.

18 According to one report in 2006, around 80% of the global population does not have access to social security. And even within this percentage, 20% exist in conditions of extreme deprivation and poverty. See Cichon, M. and Hagemeger, K., 2006. 'Social Security for All: Investing in Global and Economic Development. A Consultation' Issues in Social Protection Series, Discussion Paper 16, ILO Social Security Department, Geneva.

19 Simma, B., 'The Implementation of the International Covenant on Economic, Social and Cultural Rights, cited in Baderin, M. A., and McCorquodale, R., 2007. Supra note 10, P.23.

A number of arguments have been advanced to justify the disparity between the international protection of CP rights on the one hand and ESC rights on the other. This is in addition to the seeming inclination in some quarters to consider less seriously the protection and violation of ESC rights than the violation of CP rights.[20] However, to each and every one of these contentions there are cogent counter arguments. For instance, the notion that ESC rights are positive rights ultimately tied to the constraints/availability of resources and their allocation has been challenged with the view that a number of CP rights also require for their fulfilment positive actions and considerable State expenditure.[21] Additionally, it is opined that in actual fact a number of ESC rights are negative rights requiring no more than that States refrain from their violation.[22] Accordingly, it has been stated by the CESCR that-

> In relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential. Regrettably, the contrary assumption is too often made in relation to economic, social and cultural rights. This discrepancy is not warranted either by the nature of the rights or by the relevant Covenant provisions.[23]

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20 Statement of the Committee on Economic, Social, and Cultural Rights to the World Conference, UN Doc.E/1993/22/. P.83, para. 5.

21 Hirschl, R., 2000. '"Negative" Rights vs. "Positive" Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order.' 22 Human Rights Quarterly. Pp. 1072-3.

22 Green, M., 2001. 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurements.' 23 Human Rights Quarterly. Pp.22-3.

23 See CESCR General Comment 9, 1998 'The Domestic Application of the Covenant'. Para.10.

A related notion focuses on the concern that the very nature of ESC rights makes their enforcement onerous. Firstly, it has been argued that it is difficult to ascertain who the final duty bearers of the rights are in meaningful terms to the rights-holder in relation to certain rights such as the right to health and food.[24] Secondly, promoting ESC rights, according to another view, may result in States' interference and intrusion upon personal privacy in the guise of rights' protection. This intrusion is highly unlikely in the enforcement of CP rights which are supposedly concerned mainly with personal freedom and autonomy.[25] A counter argument to the raised issues is that the stated policy problems are not peculiar to ESC rights and would, in reality, hold true for the implementation of a number of CP rights[26] such as the right to life and freedom of movement. In particular, it has been demonstrated that the idea that the nature of ESC rights makes the determination of correlating duties problematic is merely the consequence of an oversimplification of the analysis of duties.[27] As one analyst has noted-

> [W]hen someone is tortured . . . observers almost unconsciously hold the state responsible. However, when people die of hunger or thirst [or when they suffer because they are unjustly disinherited], the world still tends to blame . . . the

[24] O'Neill, O., 2005. 'The Dark Side of Human Rights'. 81(2) International Affairs. Pp.427-439.

[25] Craven, M., 1995. Supra note 15, P.10.

[26] Yamin, A.E., 2005. 'The Future in the Mirror: Incorporating Strategies for the Defense and Promotion of Economic, Social, and Cultural Rights into the Mainstream Human Rights Agenda.' 27 Human Rights Quarterly. P.1214.

[27] Shue, H., 1988. 'Mediating Duties'. 98(4) Ethics. P.704. "[T]he difficulty is not with the discourse of rights but with the oversimplified analysis of duties that rights-based theories usually assume. If correlated with a particular right like the right to food are actually several kinds of duties, some of these correlative duties will be general and some will be special-and some will be, strictly speaking, neither general nor special but the fruit of new relationships created by new institutions designed expressly to allocate previously unallocated duties."

simple inevitability of human deprivation, before placing liability at the doorstep of the state. Worse yet, societies increasingly blame victims of such violations for creating their own dismal fates...[28]

According to a third objection to the nature of ESC rights, the underlying obstacle to the protection of these rights resides not in their intrinsic nature. It is rather connected with the lack of legal clarity of the provisions which express ESC rights' standards as well as those reflecting the nature of concomitant State Parties' obligations in the ICESCR. The provisions of Article 2 of the ICESCR obligating each Member-state to ensure the protection of ESC rights within its local jurisdiction to the 'maximum of its available resources' has been charged as being problematic.[29] To one particular critic, these words add up to 'a difficult phrase- two warring adjectives describing an undefined noun. "Maximum" stands for idealism; "available" stands for reality.'[30] On a cumulative level, it is claimed that the normative contents of ESC rights as formulated in the entire provisions of the ICESCR are such that they are burdened with 'intellectual and policy problems.'[31]

Yet if the socio-economic and political climate within which the ICESCR was adopted is dispassionately considered, it may be difficult to envision how the normative contents of these rights and resulting States' obligations could have been more properly

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28 Leckie, S., 1998. 'Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights.' 20 Human Rights Quarterly. P.82.

29 Robertson, R.E., 1994. 'Measuring State Compliance with the Obligation to Devote the "Maximum Available Resources" to Realizing Economic, Social, and Cultural Rights.' 16 Human Rights Quarterly. P.694.

30 Ibid.

31 Odinkalu, C.A., 2001. 'Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights Under the African Charter on Human and Peoples' Rights'. 23 Human Rights Quarterly. P.332.

expressed. It may thus be argued that only with the benefit of hindsight have detractors of the ICESCR been able to sustain arguments about the nature of the legal standards and obligations it stipulates. For, as noted by Beetham, the social and political background to the adoption of the ICESCR resulted in a text that struggles to attain and possibly maintain a balance between the economic advancements of the Northern States and the relative material inferiority of their Southern counterparts.[32] To him-

> This uneasy conjunction of minimum and maximum agenda . . . and the language of 'progressive achievement as resources allows' stem partly from the attempt to bridge the two. With hindsight it might have been better if the original text had concentrated on establishing a minimum agenda, while leaving it to regional charters to develop their own formulation of rights which might be more ambitious than, yet consistent with, the universal one.[33]

Perhaps some allegations that the ICESCR is an ideological relic of the Cold War era[34] and the initial attitude towards its implementation make the continual affirmation of the indivisibility and interdependence of human rights ineluctable. But, as Scott[35] rightly cautions, it is important to always be mindful that human rights are expressed as interdependent and indivisible for the benefit of the individual right-holder not the

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[32] Beetham, D., 1995. 'What Future for Economic and Social Rights.' 43 Political Studies. P.46.

[33] Ibid.

[34] "In the United Nations, economic, social, and cultural rights are an orphan of the cold war." See Tomaševski, K., 2005. 'Unasked Questions about Economic, Social and Cultural Rights from the Experience of the Special Rapporteur on the Right to Education.' 27 Human Rights Quarterly. P.717; also, Alston, P., and Quinn, G., 1987. 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights.' 9 Human Rights Quarterly. P.160.

[35] Scott, C., 1999. 'Reaching Beyond (Without Abandoning) the Category of "Economic, Social and Cultural Rights"'. 21 Human Rights Quarterly. P.634.

discourse of human rights generally. Therefore, it appears legitimate and justifiable that in present times special and considerable attention needs to be accorded to the complexity and myriad of circumstances that can result in violations of ESC rights. The reason for this is that such issues, to a very large extent, received less exploration in available jurisprudence in comparative terms to conditions that may perpetuate the violation of CP rights. Instances of denial of inheritance and discriminatory inheritance practices, to the current author, constitute illustrative examples of the less explored areas of violation of ESC rights.

It is not the intention to argue that the possible ways through which CP rights may be violated are now immediately ascertainable with the exactitude of mathematics for their simplicity. The point sought to be made is that, in relative terms, acts constituting violations of CP rights appear to have achieved more precision by the construction of relevant provisions in human rights instruments 'in the constant jurisprudence of international courts.'[36] This is in addition to the abundance of available jurisprudence of the relevant treaty bodies on matters involving violations of CP rights.[37] It is conceded that there currently exists a 'growing intellectual development and sophistication' which has ensured that ESC rights 'are no longer as neglected as they once were in relation to CP rights.' Of crucial importance in this regard is the jurisprudence of the CESCR[38] which is heavily documented and is further analysed in the next section.

[36] Tinta, M.F., 2007. 'Justiciability of Economic, Social, and Cultural Rights in the Inter-American System of Protection of Human Rights: Beyond Traditional Paradigms and Notions.' 29 Human Rights Quarterly. P.434.

[37] For example, see Chapman, A. and Russell, S., (eds.) 2002. Core Obligations: Building a Framework for Economic, Social and Cultural Rights. Antwerp, etc.: Intersentia. P.3

[38] Tinta, M.F., 2007. Supra note 37, P.435.

Iii. The CESCR and The Provisions Of The ICESCR.

A consideration of the General Comments so far published as well as the numerous Concluding Observations of the CESCR indicates that the Committee is itself aware of the criticisms that have been directed at the provisions of the ICESCR since its inception.[39] In view of this, the Committee appears to have set for itself the responsibility of clarifying the hitherto unclear 'intellectual and policy'[40] issues arising from the implementation of the provisions of the ICESCR. The CESCR's efforts in this regard have, to the current author, taken three forms[41] which are outlined below in no particular order of importance. The first is in relation to the definition of minimum core obligations in relation to specific ESC rights. For example, the Committee in its General Comment 19[42] attempted to define the minimum core obligations[43] of the right to social security. Within this purview too, the Committee has expended considerable efforts in clarifying the normative content of most rights within the category under discussion. In this respect, the level of normativity that State Parties may infer from the provisions of Article 12 of the ICESCR on the right to health, for instance, has

[39] Beetham, D., 1995. Supra note 33, P.46.

[40] Odinkalu, C.A., 2001. Supra note 32, P.332.

[41] For a different argument, see Welling, J.V., 2008. 'International Indicators and Economic, Social and Cultural Rights.' 30(4) Human Rights Quarterly. P.936, where she argues that the CESCR 'has contributed to the delineation of norms by making "stricter Concluding Observations" in its dialogue with states parties and by crafting increasingly "sophisticated and precise General Comments", which elucidates the duties and framework of each of the rights.'

[42] CESCR General Comment 19, 2008. 'The Right to Social Security', paras 59-61.

[43] The concept of minimum core obligations has been described as the 'minimum essential levels' of a right the realization of which is incumbent upon every State. See CESCR General Comment 3, 1990, 'The nature of States parties obligations', para 10. See also Young, K.G., 2008. 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content'. 33(1) Yale Journal of International Law. P.114

enjoyed extensive consideration by the Committee in its General Comment 14[44].

Secondly, the CESCR has put beyond doubt the legal character of ESC rights vis-à-vis the legal nature of the obligations incurred by State Parties under the Covenant. The indication is that the provisions in the ICESCR are couched in terms that are simultaneously idealistic and realistic so that standard setting particular to ESC rights may not amount to mere sloganeering.[45] Likewise, that prohibition of regressive measures and discrimination in the distribution of existing resources are obligations exempt from the ambit of the progressive realization provision of the ICESCR.[46] More importantly, it was the CESCR that for the first time in formal terms[47] initiated discussion regarding the desirability of the adoption of an Optional Protocol to the ICESCR, just as been in existence for the ICCPR. Consequently, in 2008, the UN General Assembly unanimously adopted[48] the Optional Protocol to the ICESCR which provides

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[44] CESCR General Comment 14, 2000, 'The Right to the Highest Standard of Health'. See also for similar efforts on the right to education in General Comment 13, 1999, 'The Right to Education'; on the right to food in General Comment 12, 1999, 'The Rights to Adequate Food'; and on the right to housing in General Comment 4, 1991 'The Right to Adequate Ho

[45] See CESCR General Comment 3, 1990, 'The Nature of States parties obligations (Art.2, para 1 of the Covenant)'.

[46] Ibid, at para 9 where it is stated that- '[T]he fact that realization [of ESC rights] over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the raison d'être, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal. Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources. (Parenthesis added).

[47] See UN Doc. E/C.12/1991/Wp.2, cited in http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.1997.105.En?Opendocument. Accessed 11 July 2012.

[48] By GA Res. 832, UN GAOR, 63rd Session, UN Doc A/RES/63/117 (2008). For official records of the plenary session, see Official Records, 66th Plenary meeting, U.N. Doc. A/63/PV. 66, 10 December 2008.

victims of ESC rights violations access to international remedy.[49]

Finally, the CESCR has recognized additional standards which may be implicitly covered but are not clearly delineated in the provisions of the ICESCR. Such implicit standards have been considered necessary for the overall meaningful implementation of not only ESC rights but indeed some CP rights as well. Efforts such as these have resulted in the explicit recognition of additional rights/standards by the Committee. An important example in this respect is the recognition of the 'right to water' which has no express provision in the text of the ICESCR. In recognition, however, that the right to water is 'indispensable for leading a life in human dignity' and 'a prerequisite for the realization of other human rights', the CESCR found extant legal bases for this right in Articles 11 and 12 of the ICESCR.[50] Accordingly, the CESCR emphasized the fact that -

> An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related diseases and to provide for consumption, cooking, personal and domestic hygienic requirements ... The right [to water] should ... be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.[51]

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[49] For an analysis of the historical background to the adoption of the optional protocol as well as an assessment of the textual provisions of the document, see Chenwi, L. 2009. 'Correcting the Historical Asymmetry between Rights: the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.' *9 African Human Rights Law Journal*. P.23; Langford, M., 2009. 'Closing the Gap? – An Introduction to the Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights.' *27(1)Nordisk Tidsskrift For Menneskerettigheter*. P.1.

[50] CESCR General Comment 15, 2002, 'The Right to Water'. Paras 1-9.

[51] *Ibid*, paras 2 and 3.

Iv. Conclusion: The Way Forward.

In addition to the efforts of the CESCR examined above, the jurisprudence of the regional human right bodies in the Americas, Africa and Europe and of national/constitutional courts in some domestic jurisdictions in the promotion and protection of ESC rights are well documented.[52] The fact that the issue of the recognition and protection of ESC rights continues to be in reception of much judicial and academic attention nationally and internationally is commendable. This may be a clear indication that the question of non-justiciability of ESC rights, if not already 'dead and buried', is presently reduced merely to 'a quiet echo from the past.'[53] Nevertheless, the alarming levels of poverty and deprivation[54] constituting large scale violations of ESC rights in developing societies and impoverished sections of the industrialized others daily illustrate that much is still needed to be done. While it may be argued that all human rights require resources for their

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52 See for instance Clapham, A. 2006. Human Rights of Non-State Actors. Oxford: University Press. P.p532-531; Tinta, M.F., 2007. Supra note 37, P.434; Nolan, A., 2009. 'Addressing Economic and Social Rights Violations by Non-state actors through the Role of the State: A Comparison of Regional Approaches to the 'Obligation to Protect.' 9(2) Human Rights Law Review. Pp.225-255. See Tomaševski, K., 2005. Supra note 35. P.717; 'Leading Cases on Economic, Social and Cultural Rights: Summaries.' Working Paper No.7 ESC Rights Litigation Programme, Centre On Housing Rights And Evictions (COHRE) 2009. Available at http://www.cohre.org/view_page.php?page_id=381. Accessed 25 May 2010.

53 See Scheinin, M., 2006. 'Justiciability and the Indivisibility of Human Rights' in Squires, J, Langford, M. and Thiele, B. (eds.), The Road To A Remedy: Current Issues in the Litigation of Economic, Social and Cultural Right. Sydney: UNSW Press. P.17. Available at http://www.cohre.org/view_page.php?page_id=381. Accessed 25 May 2010.

54 According to the Human Development Report, 2003, published for the United Nations Development Programme (UNDP), available at http://hdr.undp.org/en/media/hdr03_complete.pdf P.37, accessed 2 June 2010: 'Like South Asia, Sub-Saharan Africa faces enormous poverty. But unlike South Asia, it is being left behind. Almost across the board the story is one of stagnation. Economies have not grown, half of Africans live in extreme poverty and one-third in hunger, and about one-sixth of children die before age five - the same as a decade ago.'

protection, most human rights experts would generally agree that the full realization of ESC rights require greater expenditure of resources by any State.[55] This reality raises the question as to whether it may be more cost effective for States (especially developing States) to fulfil ESC rights if more attention is directed instead to addressing the 'causes' of violations rather than attempting to eradicate their 'symptoms'[56].

It appears that much of the present efforts channelled towards the protection of most ESC rights have focused on proving their justiciability and independent existence as human rights and not merely the socio-cultural and economic aspects of CP rights.[57] It may, therefore, be more fruitful if States are required under existing human rights obligations to give more serious attention to preventing circumstances that result in scenarios of homelessness, destitution, and hunger than concentrating majorly on remedial and restitutive measures. The sense of what is intended here is captured by Craven's argument that some terminologies defining the nature of State Parties' obligations in respect of ESC rights-

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[55] See Baderin, M. A., and McCorquodale, R., 2007. Supra note 10, P.12. "Although it has been argued accurately that some (CP rights) also require resources to be protected, it is clear that ESC rights generally require greater resources to achieve. This has greatly affected the full development and realization of the ESC rights over the years, especially in developing states."

[56] See for example the argument by Craven that the human rights project is famous amongst others for 'promising too much, delivering too little; failing to manage conflicting interests; treating symptoms not causes; and so on.' Craven, M., 2006. 'Assessment of the Progress on Adjudication of Economic, Social and Cultural Rights' in Squires, J, Langford, M. and Thiele, B. (eds.). Supra note 154, P.29.

[57] Consider the argument by Warbrick that the notion that the European Convention on Human Rights protected ESC rights prior to the adoption of the European Social Charter is misconceived. In his view, what that Convention did in qualifying cases was to protect the social and economic aspects of CP rights. This much, to him, is certainly not the same as recognizing ESC rights as independent claims. Warbrick, C. 2007. 'Economic and Social Interests and the European Convention on Human Rights' in Baderin, M. A., and McCorquodale, R., (eds.). Supra note 110, P.241. Compare this position with the argument by Scheinin that such notion in fact emphasizes the interdependence and indivisibility of all human rights and has the potentiality for the strengthening the protection of economic social and cultural rights by providing some guidance as to how their violations may successfully be adjudicated. Scheinin, M., 2006. Supra note 154, Pp.20-23.

> leaves untouched the basic question as to whether society is structured in a way that allows the continued production and reproduction of impoverishment. . . Without some broader engagement with the structural causes of poverty that permeate the private realm of exchange, an emphasis upon public law remedies will do little other than merely legitimate existing distributions of wealth, status and power throughout society, and render more difficult any action which seeks to reconfigure them.[58]

To the current author, such structural causes will include, particularly in the context of developing and transitioning contexts such as most African countries, the issue of official corruption; favouritism in the allocation of administrative and bureaucratic responsibilities and benefits, where 'round pegs' are inserted in 'square holes'; and an impaired value-system that recognises and in fact rewards unscrupulous behaviours that result in material success at the expense of fair-dealing, noble character and personal integrity.

[58] Craven, M., 2006. Supra note 157, P.36.